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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 VLADAN MILOSAVLEJEVIC and
8 ANGEL MICHAEL AND GABRIEL, LLC,

9 Plaintiffs/Petitioners,

10 v.

11 CITY OF BRIER,

12 Defendant/Respondent.
13

Case No. C16-1414RSM

ORDER GRANTING RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING PETITIONER'S
MOTIONS FOR LEAVE TO FILE
SURREPLY AND TO CONTINUE
TRIAL AND AMEND CASE SCHEDULE

14 **I. INTRODUCTION**

15 This matter comes before the Court on Respondent's Motion for Summary Judgment.
16 Dkt. #32. Petitioner's claims arise from Respondent's denial of his request for a height variance
17 necessary to build a personal chapel. Petitioner's proposed personal chapel would exceed
18 Respondent's 30-foot residential land-use zone's height-cap.¹ Dkt. #20 at 2. Respondent asks
19 the Court to dismiss Petitioner's claims on the basis that (1) Petitioner does not meet the elements
20 necessary to establish a violation of the Religious Land Use and Institutionalized Persons Act's
21 ("RLUIPA"), 42 U.S.C. § 2000ee, substantial burden provision; (2) Petitioner does not meet the
22 elements necessary to establish a violation of RLUIPA's equal terms provision; (3) Petitioner's
23 Civil Rights Act, 42 U.S.C. § 1983 ("Section 1983"), claims are without legal or factual basis;
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27 ¹ The Court notes that Petitioner previously applied for a building permit, but later abandoned
28 the application. AR 5 and Dkt. #32-1 at 2. Therefore, even if the Court were to find in
Petitioner's favor, Petitioner could not yet build his chapel.

1 and (4) delay damages are not available in any event. Dkt. #32. Petitioner opposes the Motion,
2 arguing that genuine disputes exist as to material facts, and therefore respondent is not entitled
3 to summary judgment. Dkt. #33. Additionally, Petitioner has filed a Motion for Leave to File a
4 Surreply and a Motion to Continue Trial Date and Amend Case Schedule. Dkts. #37 and #38.
5 For the reasons discussed below, the Court now GRANTS Respondent's Motion for Summary
6 Judgment and DENIES Petitioner's Motions For Leave To File Surreply and To Continue Trial
7 and Amend Case Schedule.
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9 **II. BACKGROUND**

10 Petitioner Vladan Milosavljevic seeks to build a personal Serbian Orthodox chapel on
11 property owned by his company, Angel Michail and Gabriiel, LLC., in the City of Brier,
12 Washington ("City").² Dkts. #1-1 at ¶ 2 and #33-1 at ¶¶ 22-22. To comply with religious
13 standards, Petitioner asserts that his chapel must meet specific architectural dimensions,
14 including two domes, each spanning 40-feet five and one-half inches from the interior floor to
15 the exterior height. Dkt. #17 at 6. Petitioner's property is located in a residential land-use zone.
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17 *Id.* Prior to seeking to build a chapel, Petitioner worshipped in his home, and attended Serbian
18 Orthodox church services in King and Snohomish Counties. Dkts. #32 at 7 and #34 at 3.
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20 Under Brier Municipal Code ("BMC") 17.28.010(E), buildings in single-family
21 residential zones may not exceed a maximum height of 30 feet. Individuals planning to erect
22 structures exceeding 30 feet must apply and be approved for height variances in addition to
23 building permits. Dkt. #34 at 12. To obtain a variance, applicants must meet eight criteria.
24 Administrative Record ("AR") at 72. The procedure for processing variance applications is set
25 forth in BMC 17.36.050(E).
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28 ² For ease of reference, Mr. Milosavljevic and Angel Michail and Gabriel LLC will be referred
to as a singular Petitioner.

1 On May 19, 2015, Petitioner applied for a height variance to construct his chapel. AR 2-
2 3. As proposed, Petitioner's chapel would exceed the City's single-family residential height limit
3 by ten feet, five and one-half inches. Petitioner asserts that his proposed chapel domes are
4 "vehicle[s] for . . . prayers to be sent to the heavens." *Id.* at 25. Petitioner states that while his
5 chapel height specifications originate from his grandfather's wishes, the 40-foot dome
6 measurement originates from the Serbian Orthodox belief that 40 is a holy number. *Id.* at 56;
7 Dkt. #32-1 at 7. According to an architectural report obtained by City Planner Lauren Balisky,
8 under communism, Serbians were prohibited from developing traditional Serbian Orthodox
9 churches in the Byzantine style of architecture. AR 120 (*Ex. K*). Since then, "Serbs in exile,
10 especially in the United States, [are] in a better position to develop previously built church
11 building traditions than indigenous communities." *Id.* The architectural report notes that Serbian
12 Orthodox churches are "not supposed to look like a house, as their functions are completely and
13 fundamentally different. Thus, heights should not be constrained to residential heights." *Id.* at
14 120-22. The Serbian Orthodox U.S. and Canada's Western American Diocese note that a
15 church's height must be proportional to its footprint in length and width. *Id.* at 123 (*Ex. A*).
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19 On March 30th, the Commission voted unanimously to recommend denying Petitioner's
20 variance application, and directed staff to prepare a report and recommendation to the City
21 Council for consideration at its April 20, 2016 meeting. *Id.* at 344. On April 20th, the
22 Commission reviewed the proposed Report and Recommendation, and voted to postpone action
23 until May 18, 2016, due to Petitioner's allegations that denying his application would constitute
24 a religious rights violation. *Id.* The Commission also authorized its Chair to re-open the hearing
25 on the application if recommended by the City Attorney, which he did on May 2, 2016. *Id.* On
26 May 18th, the Commission held the hearing, received a Final Revised Staff Report with
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1 attachments, and again heard from Petitioner, three members of the public, and City staff. AR
2 346-468. The Commission then passed a motion to approve a report to the City Council,
3 recommending Petitioner's variance be denied. *Id.* at 343-45. The Commission's report noted
4 that Petitioner met only two of eight mandatory criteria for granting variances. *Id.* at 344 and
5 349-57. On July 19, 2016, the City Council denied Petitioner's application. Dkt. #17 at 21.
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7 Petitioner then filed a Complaint in Snohomish County Superior Court, alleging that the
8 variance procedure violated Washington's Land Use Petition Act ("LUPA"), RCW 36.70C, *et*
9 *seq.*, and that the denial of the variance burdens his right to due process, free exercise of religion,
10 and equal protection of the law. *Id.* at ¶ 31. Additionally, Petitioner alleged he suffered
11 discrimination by the City because staff had personal vendettas against him. *Id.* at ¶¶ 29-30.
12 Petitioner believes the City's Mayor, Bob Colinas, is of Croatian heritage and acted vengefully
13 against Petitioner who identifies as Serbian. Dkt. # 35-1 at 35-36.
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15 On September 9, 2016, the case was removed to this Court. Dkt. #1 at 1. On March 10,
16 2017, the Court denied Petitioner's LUPA claim. Dkt. #24. The Court now addresses
17 Petitioner's remaining RLUIPA and Section 1983 claims.
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19 III. DISCUSSION

20 A. Standard of Review for Motions of Summary Judgment

21 Summary judgment is appropriate where "the movant shows that there is no genuine
22 dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.
23 R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). In ruling on summary
24 judgment, courts do not weigh evidence to determine the truth of the matter, but "only
25 determine[s] whether there is a genuine issue for trial." *Crane v. Conoco, Inc.*, 41 F.3d 547, 549
26 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O'Melveny & Meyers*, 969 F.2d 744, 747
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1 (9th Cir. 1992)). Material facts are those which might affect the outcome of the suit under
2 governing law. *Anderson*, 477 U.S. at 248.

3 Courts must draw all reasonable inferences in favor of the non-moving party. *See*
4 *O'Melveny & Meyers*, 969 F.2d at 747 (rev'd on other grounds). However, to survive summary
5 judgment, the nonmoving party must make a "sufficient showing on an essential element of her
6 case with respect to which she has the burden of proof." *Celotex Corp. v. Catrett*, 477 U.S. 317,
7 323 (1986). Further, "[t]he mere existence of a scintilla of evidence in support of the petitioner's
8 position will be insufficient; there must be evidence on which the jury could reasonably find for
9 the petitioners." *Anderson*, 477 U.S. at 251.

11 **B. RLUIPA Claim**

12 RLUIPA was established to protect the "free exercise of religion from government
13 regulations." *Anselmo v. County of Shasta, Cal.*, 878 F. Supp. 2d 1247, 1254 (E.D. Cal. 2012)
14 (citing *Guru Nanak Sikh Soc. Of Yuba City v. County of Sutter*, 456 F.3d 978, 985 (9th Cir.
15 2006)). RLUIPA contains several provisions limiting government regulation of land use,
16 referred to as: (1) the substantial burden provision, (2) the equal terms provision, (3) the
17 nondiscrimination provision, and (4) the exclusions and limits provision. *See* 42 U.S.C. § 2000cc;
18 *Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1169 & n.24 (9th Cir.
19 2011); *see also Holy Ghost Revival Ministries v. City of Marysville*, 98 F. Supp. 3d 1153, 1170-
20 71 (W.D. Wash. 2015). Petitioner asserts claims under RLUIPIA's first and second provisions.
21 Dkt. # 1-1 at ¶¶ 22 and 24.

22 Under RLUIPA's substantial burden provision, a "government land-use regulation 'that
23 imposes a substantial burden on the religious exercise of a [person, including a] religious
24 assembly or institution' is unlawful 'unless the government demonstrates that imposition of the
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1 burden . . . is in furtherance of a compelling government interest; and is the least restrictive means
2 of furthering that compelling governmental interest.’” *Int’l Church of the Foursquare Gospel v.*
3 *City of San Leandro*, 673 F.3d 1059, 1066 (9th Cir. 2011) (quoting 42 U.S.C. § 2000cc(a)(1)).
4 Free religious exercise includes “any exercise of religion, whether or not compelled by, or central
5 to, a system of religious belief.” 42 U.S.C. § 2000cc-5(7)(A). RLUIPA provides that “[t]he use,
6 building, or conversion of real property for the purpose of religious exercise shall be considered
7 to be religious exercise of the person or entity that uses or intends to use the property for that
8 purpose.” 42 U.S.C. § 2000cc-5(7)(B). Respondent argues that Petitioner fails to demonstrate
9 that his exercise of religion was substantially burdened by the City’s denial of his variance
10 request. Dkt. #33 at 7.
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13 Under RLUIPA’s equal terms provision, governments are prohibited from imposing land-
14 use “restriction[s] on a religious assembly ‘on less than equal terms’ with a nonreligious
15 assembly.” *Centro Familiar*, 651 F.3d at 1169 (citing 42 U.S.C. § 2000cc(b)). Respondent
16 alleges that Petitioner does not qualify as a religious assembly or institution under RLUIPA. Dkt.
17 #32-1 at 15. Respondent further argues that, even if Petitioner is a religious assembly, the City
18 did not treat Petitioner on less than equal terms to comparable nonreligious or secular assemblies
19 or institutions. Dkts. #32-1 at 16 and #33 at 7. For the reasons discussed below, the Court finds
20 that Petitioner’s RLUIPA claims fail under both provisions.
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22 *1. Substantial Burden Provision*

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24 The Court’s analysis under the “substantial burden” provision “proceeds in two sequential
25 steps.” *Int’l Church*, 673 F.3d at 1066. “First, the plaintiff must demonstrate that a government
26 action has imposed a substantial burden on the plaintiff’s religious exercise.” *Id.* “Second, once
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1 a plaintiff has shown a substantial burden, the government must show that its action was ‘the
2 least restrictive means’ of ‘further[ing] a compelling government interest.’” *Id.* (citation omitted).

3 Respondent argues that Petitioner fails to demonstrate a substantial burden on his free
4 exercise of religion because alternative locations exist in which Petitioner may practice his
5 religion. Dkt. #32-1 at 15. Petitioner responds that existing alternative places of worship do not
6 alleviate his burden or diminish his interest in building a personal chapel. Dkt. #33 at 8-12. Also,
7 Petitioner asserts that the City made its decision without providing a compelling government
8 interest in the least restrictive means, thus, Petitioner’s religious burden is unjustified. *Id.*

10 As noted above, RUILPA provides that “[t]he use, building, or conversion of real
11 property for the purpose of religious exercise shall be considered to be religious exercise of the
12 person or entity that uses or intends to use the property for that purpose.” 42 U.S.C. § 2000cc-
13 5(7)(B). The Ninth Circuit has stated that, “[f]or a land use regulation to impose a substantial
14 burden, it must be oppressive to a significantly great extent.” *Int’l Church*, 673 F.3d at 1066.
15 (citation and internal quotation marks omitted). “A substantial burden exists where the
16 governmental authority puts ‘substantial pressure on an adherent to modify his behavior and to
17 violate his beliefs.’” *Id.* (citation omitted). “When the religious institution ‘has no ready
18 alternatives, or where the alternatives require substantial ‘delay, uncertainty, and expense,’ a
19 complete denial of the application might be indicative of a substantial burden.” *Int’l Church*,
20 673 F.3d at 1068 (citing *Westchester Day Sch. V. Vill. Of Mamaroneck*, 504 F.3d 338 (2nd Cir.
21 2007)).

25 Petitioner asserts that existing places of worship do not alleviate the burden on his free
26 exercise of religion nor minimize his desire to build a personal chapel. Dkt. #33 at 9. Petitioner
27 claims that traveling to existing Serbian Orthodox churches would be substantially burdensome
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1 and pressure him to “modify his behavior and his beliefs.” Dkt. #33 at 10 (quoting *Guru Nanak*
2 *Sikh Soc.*, 456 F.3d at 988). However, Petitioner does not provide any evidence to demonstrate
3 this substantial burden. For example, Petitioner has not provided data regarding the distance
4 between his residence and alternative places of worship, or the cost of travel, nor has he
5 differentiated the type of worship services between churches.
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7 Respondent argues that because Petitioner may still practice his religion in his home or
8 at local Serbian churches, the inconvenience of traveling to existing churches does not constitute
9 a “substantial burden on the free exercise of religion.” Dkt. #32-1 at 12 and 22 (citing *Korean*
10 *Buddhist Dae Won Sa Temple of Hawaii v. Sullivan*, 953 P.2d 1315, 1320 (Haw. 1998); *Guru*
11 *Nanak Sikh Soc.*, 56 F.3d at 988). Respondent points to Petitioner’s own witness, Orthodox Priest
12 Lavrentije Janjic, who states that Petitioner’s prayer can take place anywhere, including within
13 other churches and homes. Dkt. #32-1 at 14. Accordingly, Respondent has not prevented the
14 Petitioner from continuing to worship anywhere by declining to grant a variance.
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16 In *Int’l Church of the Foursquare Gospel v. City of San Leandro*, the court found that a
17 substantial burden could exist where there were “no other suitable sites . . . in the City to house
18 the Church’s expanded operations.” 673 F.3d at 1067. Petitioner’s situation is distinguishable
19 from that in *Int’l Church* because Petitioner fails to demonstrate that there are no other suitable
20 sites for him to worship. Specifically, Petitioner has failed to show that he cannot attend services
21 at a different church, or that he cannot continue to worship within his own home. Nor has
22 Petitioner demonstrated that he could not procure another location within a different City zone
23 to build a chapel.³
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³ Petitioner owns additional properties in the area. Dkt. #34 at 4, fn. 5.

1 The Court finds that Petitioner fails to demonstrate that his free exercise of religion is
2 substantially burdened by the City's failure to grant a height variance. Petitioner has ready
3 alternative places of worship at his disposal. Likewise, the City has not precluded the Petitioner
4 from practicing his faith at home or other faith centers. *See San Jose Christian Coll. v. City of*
5 *Morgan Hill*, 360 F.3d 1024, 1035 (9th Cir. 2004) (“[W]hile the PUD ordinance may have
6 rendered College unable to provide education and/or worship at the Property, there is no evidence
7 in the record demonstrating that college was precluding from using other sites within the city.”).

9 The Court also finds that the City's zoning procedures “do not impose a substantial
10 burden simply because they prevent a religious institution or person from constructing an ideal
11 place of worship.” Dkt. #33-1 at 12. In fact, Petitioner is in the same position as he was before
12 submitting the variance request; he and his family may continue to worship within their home,
13 where they have worshipped for nearly 20 years. Dkts. #32-1 at 22 and #34 at 3. While
14 worshipping within a home or church in Snohomish and King Counties is unsatisfactory to
15 Petitioner, this inconvenience does not rise to the level of a substantial burden. Dkt. #32-1 at 7.
16 Additionally, nothing precludes Petitioner from submitting a building permit application for land
17 located within a different zone. Dkt. #34 at 4. These options may be inconvenient, but are not
18 substantially burdensome, particularly given that petitioner has experience in the construction
19 business and owns additional properties.

22 Since Petitioner fails to demonstrate that the City imposed a substantial burden on his
23 religious exercise, the Court need not consider whether the City's action furthers a compelling
24 governmental interest in the least restrictive manner possible.

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1 2. *Equal Terms Provision*

2 The Court next turns to Respondent’s argument that Petitioner’s equal terms claim fails
3 as a matter of law. The “equal terms” provision provides: “No government shall impose or
4 implement a land use regulation in a manner that treats a religious assembly or institution on less
5 than equal terms with a nonreligious assembly or institution.” 42 U.S.C. § 2000cc(b)(1). To
6 succeed on such a claim, the claimant must demonstrate four elements: “(1) an imposition or
7 implementation of a land-use regulation, (2) by a government, (3) on a religious assembly or
8 institution, (4) on less than equal terms with a nonreligious assembly or institution.” *Corp. of*
9 *the Catholic Archbishop of Seattle v. City of Seattle*, 28 F. Supp. 3d 1163, 1166 (W.D. Wash.
10 2014). Courts analyze the equal terms provision by examining whether a government regulation
11 subjects similarly situated religious and secular assemblies or institutions to different land-use
12 treatment. *Id.* Courts also ask whether a government has a legitimate justification for denying
13 land-use permits. *Id.* at 1167. Respondent argues that (1) Petitioner does not qualify as a
14 religious assembly or institution under RLUIPA; and (2) even if Petitioner is a religious
15 assembly, the City did not treat Petitioner on less than equal terms to comparable nonreligious or
16 secular assemblies or institutions. Dkt. #32-1 at 16.

17 To support its first argument, Respondent asserts that Petitioner is neither a religious
18 assembly nor institution because he is seeking to build a chapel for personal worship only.
19 However, Petitioner argues that by including his extended family in his faith-group, he classifies
20 as an assembly. Dkt. #33-1 at 12. Petitioner argues that his family counts as an assembly because
21 his family gathers for the common interest of prayer. *Id.* at 13. RLUIPA does not define the
22 term “religious assembly.” Thus, courts have used dictionary definitions to discern the term’s
23 plain and ordinary meaning. *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1230
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1 (11th Cir. 2004). Black’s Law Dictionary defines assembly as “a group of persons who are united
2 and who meet for some common purpose.” (10th ed. 2014). RLUIPA and case law use
3 “assembly” and “institution” interchangeably. One definition of an “institution” includes “[t]he
4 investiture of a cleric with a benefice, by which the cleric becomes responsible for the spiritual
5 needs of the members of a parish.” BLACK’S LAW DICTIONARY (10th ed. 2014). Unfortunately,
6 neither definition addresses whether Petitioner’s extended family may be included in a group-
7 classification as an assembly or institution.
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9 However, even if the Court accepts that Petitioner classifies as a religious assembly or
10 intuition, the Court finds that Petitioner fails to demonstrate unequal treatment. Respondent
11 argues that since “there are no buildings with[in] the City of Brier that exceed 30 feet in height
12 as determined per the [City] Code,” there are no secular or non-secular organizations to which
13 the Petitioner can be compared. Dkts. #32-1 at 17 and #34 at 7. That being said, neither Petitioner
14 nor Respondent provide this Court with evidence of whether or not the City denied all variances
15 to proposed buildings above 30 feet. It is possible that a variance may have been approved, but
16 the resulting building was not constructed.
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19 In *Corp. of the Catholic Archbishop of Seattle*, petitioner Bishop Blanchet High School
20 applied for a variance to construct 70-foot tall light poles for lighting athletic fields. 28 F.
21 Supp.3d 1163, 1165 (W.D. Wash. 2014). These light poles would have exceeded Seattle’s 30-
22 foot residential height limit, so the City denied the variance. *Corp. of the Catholic Archbishop*
23 *of Seattle*, 28 F. Supp. 3d at 1165. In the subsequent litigation, the Court denied Seattle’s Motion
24 for Summary Judgement, finding that Seattle violated RLUIPA because petitioner was similarly
25 situated to comparable public schools that lit their athletic fields in residential neighborhoods,
26 and had been allowed to construct light poles exceeding the City’s height limit. *Id.* at 1169. In
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1 that case, petitioners provided a comparison to a similarly situated school with similar light poles
2 on similar athletic fields. *Id.* Here, Petitioner provides no such comparison. Dkt. #34 at 8.
3 Instead, Petitioner compares his proposed chapel to City Light and AT&T electricity and cell
4 phone towers that stand taller than 30 feet. Dkt. #34 at 7. Respondent responds that the proposed
5 chapel and the utility towers differ in two ways: (1) utility towers and chapels serve different
6 purposes and are not comparable; and (2) each tower is located within a utility corridor zone,
7 rather than a residential zone where Petitioner's property is located. *Id.*

9 The Court agrees with Respondent. First, as other courts have noted, “[i]f a plaintiff does
10 not offer a suitable comparator . . . there can be no cognizable evidence of less than equal
11 treatment, and the plaintiff cannot meet its initial burden of proof.” *Irshad Learning Center v.*
12 *County of Dupage*, 937 F. Supp.2d 910, 932 (N.D. Ill. 2013). Utility towers are not suitable
13 comparators to chapels. They serve completely different purposes, and they are located within
14 different City zones with different zoning criteria. Thus, the Court finds that regardless of
15 whether or not Petitioner is a religious assembly or institution, Petitioner does not demonstrate
16 that he was treated less than equal to similarly situated applicants.

19 **C. Section 1983**

20 Next, the Court considers Petitioner's Section 1983 claims. Dkt. #1-1 at 5-7. Petitioner's
21 claims are based on the belief that City Council members hold personal vendettas against him,
22 resulting in the decision to deny his variance. Dkt. #1-1 at ¶¶ 29-31. Petitioner alleges that
23 Respondent's variance denial violates his right to free exercise of religion and equal protection.⁴
24 *Id.* Respondent argues that Petitioner's Section 1983 claims are foreclosed by the Court's prior
25 LUPA decision. Dkt. #32 at 18. In the alternative, Respondent argues that Petitioner's Section
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28 ⁴ Petitioner initially alleged a “due process” claim in his Complaint; however, he has since
clarified that he is not asserting an independent due process claim. Dkt. #33 at 17.

1 1983 claims fail because the City's variance decision was made without bias or discrimination.
2 *Id.* at 20. Respondent also contends that even if the Court's LUPA decision does not foreclose
3 Petitioner's Section 1983 claims, Petitioner is not entitled to a variance because his application
4 did not meet all eight of the City's criteria. *Id.* at 20. In response, Petitioner argues that state
5 remedies do not foreclose federal remedies, and Section 1983 is an independent remedy to state
6 law. Dkt. #33 at 16 (citing *Holy Ghost Revival Ministries*, 98 F. Supp. 3d at 1165; *Monroe v.*
7 *Pape*, 365 U.S. 167, 183 (1961)). Petitioner also argues that questions of material fact preclude
8 summary judgment. As discussed below, the Court finds that Petitioner's Section 1983 claims
9 fail as a matter of law because: (1) Petitioner's 1983 claims rely on the same facts and theories
10 as his RLUIPA equal terms claims; (2) Petitioner's discrimination claims are weakened by the
11 fact that his variance application only met two of eight mandatory criteria for granting variances
12 (Dkt. #32-1 at 17-18); and (3) even if the Petitioner was granted a variance, he did not have a
13 building permit to begin construction. Therefore, the Court need not address whether its prior
14 LUPA decision forecloses Petitioner's claims.
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18 Petitioner's Section 1983 claims rely on the same facts and theories as his RLUIPA equal
19 terms claims. As previously discussed, Petitioner has not provided enough evidence for a jury
20 to find that the City treated him on less than equal terms to comparable nonreligious or secular
21 assemblies or institutions. Petitioner's comparison of chapels to utility towers is unpersuasive.
22 Dkt. #32-1 at 17. Thus, the Court finds that Petitioner's Equal Protection claim fails on the basis
23 that Petitioner cannot demonstrate an appropriate comparator.
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25 The Court also agrees with Respondent that Petitioner's discrimination claims are
26 undermined by the fact that his variance application met only two of eight mandatory criteria for
27 granting variances. Dkt. #32-1 at 17-18. Petitioner has not demonstrated that any of the eight
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1 variance criteria are invalid, nor that the City's alleged discriminatory acts prevented him from
2 meeting the eight criteria. *See Bulchis v. City of Edmonds*, 671 F. Supp. 1270, 1271 (W.D. Wash.
3 1987) (finding the City's process for denying a conditional use permit invalid). Further,
4 Petitioner has not submitted evidence that other organizations, similarly situated or not, have
5 obtained variances while only meeting two of the City's eight mandatory criteria. Since there is
6 no material issue with the City's criteria for evaluating a variance, Petitioner fails to demonstrate
7 either unequal treatment or any racial animus.
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9 In addition, the Court notes that regardless of whether or not the City granted Petitioner's
10 variance request, Petitioner could not construct his chapel. The City does not allow construction
11 without a building permit (and variance when necessary). Dkt. #34 at 12 and 24. Petitioner has
12 not demonstrated that anyone within the City has been allowed to begin construction without a
13 building permit, nor has be demonstrated that he would have received a building permit if he had
14 first received the variance. Since Petitioner did not submit a complete building permit
15 application, he could not begin construction. *Id.*
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18 Likewise, Petitioner has not produced sufficient evidence that the City's decision was
19 bias-motivated. Dkt. #33 at 21. Petitioner asserts "proof [of intentional unequal treatment] is
20 not essential to" denying Respondent's Motion for summary judgment because the exercise of
21 religion is an issue of fundamental rights. Dkt. #33 at 17-18. However, generally to defeat a
22 motion for summary judgment petitioners must provide evidence that respondent acted with
23 discriminatory intent. *See Thorton v. City of St. Helens*, 425 F.3d 1158, 1167 (9th Cir. 2005).
24 Valid evidence of discriminatory intent must be more than a mere a conclusory statement of bias.
25 *Id.* Additionally, being a member of a specific classification, by itself, does not mean that a
26 petitioner has suffered discrimination. *Id.*
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Petitioner claims in conclusory manner that City officials acted discriminatorily toward him. Dkt. #1-1 at ¶¶ 29-30. Specifically, Petitioner believes that Mayor Colinas is of Croatian heritage. Dkt. # 35-1 at 35-36. Petitioner asserts that a “longstanding ethnic strife” caused Croatians to dislike Serbians. Dkt. #33 at 17. As a result of ethnic tension, Petitioner believes Mayor Colinas acted negatively toward him. Dkt. # 35-1 at 35-36. Respondent asserts its decision to deny Petitioner’s variance had nothing to do with Mayor Colinas’ or the City Councilmembers’ alleged personal vendettas or prejudice, nor Petitioner’s Serbian heritage. *Id.* at 22. Instead, as demonstrated through email exchanges between City Planners and Petitioner, City Planners provided him feedback and opportunities to amend or complete his variance request and invited Petitioner to discuss the variance at open City Council hearings. AR 4 and 70. Ultimately he failed to meet six of the eight mandatory variance criteria. Petitioner simply has not provided evidence that City officials acted discriminatorily in the variance process. For all of these reasons, Petitioner’s Section 1983 claims must fail as a matter of law.

D. Delay Damages

Finally, Respondent seeks summary judgment on the basis that the only damages sought by Petitioner in this matter are improper. Petitioner seeks \$300,000 in “delay” damages to cover the alleged increase in cost of building materials and labor since the denial of his variance. Dkt. # 33-1 at ¶ 19. Given the Court has found that Petitioner’s claims fail as a matter of law, this argument is now moot, and the Court will not address it.

E. Motion for Leave to File Surreply

On August 4, 2017, Petitioner filed a Motion For Leave To File Surreply, asking the Court to consider additional arguments as to why he wants to build his chapel. Dkt. #37. Under Local Civil Rule 7(g), surreplies are limited to motions to strike. Since Petitioner does not assert a

1 motion to strike in his proposed surreply, the surreply is improper. Moreover, the Court
2 understands Petitioner's arguments from the existing briefing and no further briefing is required.
3 Therefore, the Court DENIES Petitioner's Motion for Leave To File Surreply.

4 **F. Motion to Continue Trial and Amend Case Schedule**

5 Also on August 4, 2017, Petitioner filed a Motion to Continue Trial and Amend Case
6 Schedule in order to find two replacement expert witnesses. Dkt. #38. Petitioner is apparently
7 dissatisfied with his expert witnesses Mr. Janjic and Chris Gochev, asserting that they provided
8 misleading information about their qualifications. *Id.* at 2-3. Petitioner proposes a four-month
9 continuance to find new witnesses, claiming that a continuance is necessary to present an
10 adequate case and that four months will not substantially inconvenience Respondents. *Id.* at 5.
11 Given the Court has found that Petitioner's claims fail as a matter of law, this argument is now
12 moot, and therefore the motion will be DENIED.
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15 **IV. CONCLUSION**

16 Having reviewed the relevant pleadings, the Declarations and exhibits attached thereto,
17 and the remainder of the record, the Court hereby finds and ORDERS:
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- 19 1. Respondent's Motion for Summary Judgment (Dkt. #32) is GRANTED and the
20 remainder of Petitioner's claims are DISMISSED in their entirety.
- 21 2. Petitioner's Motions For Leave To File Surreply (Dkt. #37) and to Continue Trial and
22 Amend Case Schedule (Dkt. #38) are DENIED.
- 23 3. This case is now CLOSED.

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DATED this 7th day of September, 2017.

A handwritten signature in black ink, appearing to read 'R. Martinez', written over a horizontal line.

RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE